Supreme Court, U.S.
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No. 91-1939

In the Supreme Court of the United States

OCTOBER TERM, 1992

MYRON AND DOROTHY MILES, PETITIONERS

v.

EDWARD R. MADIGAN, SECRETARY OF AGRICULTURE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals correctly affirmed the district court's conclusion that petitioners' contract claims, which were brought in district court and sought no monetary relief, are barred by the sovereign immunity of the United States.

2. Whether the court of appeals correctly affirmed the district court's dismissal of petitioners' claims under the Administrative Procedure Act, because petitioners did not demonstrate that the agency violated its regulations and the relief requested is unavailable in any event.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	4
Conclusion	8

TABLE OF AUTHORITIES

Cases:

Bowen v. *Massachusetts*, 487 U.S. 879 (1988)	6
Coggeshall Development Corp. v. *Diamond*, 884 F.2d 1 (1st Cir. 1989)	6
Eagle-Picher Industries, Inc. v. *United States*, 901 F.2d 1530 (10th Cir. 1990)	6
Laguna Hermosa Corp. v. *Martin*, 643 F. 2d 1376 (9th Cir. 1981)	5
Lehner v. *United States*, 685 F.2d 1187 (9th Cir. 1982), cert. denied, 460 U.S. 1039 (1983)	5
North Side Lumber Co. v. *Block*, 753 F.2d 1482 (9th Cir.), cert. denied, 474 U.S. 931 (1985)	5
Price v. *United States General Services Admin.*, 894 F.2d 323 (9th Cir. 1990)	5
Rowe v. *United States*, 633 F.2d 799 (9th Cir. 1980), cert. denied, 451 U.S. 970 (1981)	5
United States v. *Caceres*, 440 U.S. 741 (1979)	7
Wisniewski v. *United States*, 353 U.S. 901 (1957)	5

Constitution, statutes and regulations:

U.S. Const. Amend. V	4
Administrative Procedure Act, 5 U.S.C. 702	5, 6
Food Security Act, 7 U.S.C. 1985	2
7 C.F.R.:	
Section 1955.137	2, 7
Section 1955.137(a)(2)(i)	7

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 40-47) is unreported, but the judgment is noted at 956 F.2d 275 (Table). The opinions and accompanying orders of the district court (Pet. App. 1-39) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 28, 1992. The petition for a writ of certiorari was filed on May 28, 1992. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioners Myron and Dorothy Miles purchased a 1046-acre cattle ranch in Baker County, Oregon, with the financial assistance of the Farmers Home Administration (FmHA), a federal agency. FmHA secured the loan with a second mortgage on petitioners' property. Petitioners later defaulted on the mortgage and, on November 22, 1985, deeded the ranch to FmHA in order to avoid foreclosure. Upon taking title to the property, FmHA paid off other debt that existed on the property, and wrote off petitioners' debt of $269,871.76. FmHA permitted petitioners to remain on the ranch. Pet. App. 2-3.

On December 23, 1985, Congress enacted the Food Security Act, 7 U.S.C. 1985, which required that FmHA offer lease-back/buyback rights to former owners of property held by the agency. FmHA issued regulations implementing the Food Security Act requiring, among other things, that the government notify prospective buyers or lessees of federally-owned property of any use restrictions under certain regulations governing the conservation of wetlands. See 7 C.F.R. 1955.137. Shortly thereafter, FmHA informed petitioners that they were eligible for the lease-back/buy-back program. Petitioners were not able to purchase the ranch at that time, but requested a three-year purchase option. Pet. App. 3.

On March 13, 1987, FmHA and petitioners entered into a lease of the property. At petitioners' request, the lease terms specified that petitioners retained the lease-back/buy-back rights provided by FmHA regulations. Pet. App. 3.

3. On February 25, 1988, the U.S. Fish and Wildlife Service (FWS) informed FmHA that a wetlands complex existed on the property. FWS later recommended that use of the entire tract be restricted by a

conservation easement. After reinspecting the property at FmHA's request, FWS reduced the wetlands acreage estimation to 609 acres. On October 13, 1988, representatives of the relevant federal and state agencies, accompanied by Mr. Miles, staked out the first estimáte of the easement boundaries. Pet. App. 4.

On January 10, 1989, four federal agencies, including the FWS, adopted the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (the Manual). The Manual prescribes the technical basis for determining the existence of wetlands. Pet. 5-6.

On February 8, 1989, FmHA notified the Miles that a wetlands easement would be imposed on the property but that it intended to abide by the lease-back/buy-back agreement. One month later, after receiving notice of the easement, the Miles notified FmHA that they wished to exercise their buy-back rights. FmHA responded that before sale of the property could proceed, a final determination on the easement boundaries would have to be made. Pet. App. 4-5.

Government officials again returned to the property on April 20, 1989. They concluded that 609 acres of the property should be protected by a conservation easement and that they had properly staked out the boundaries. Pet. App. 4-5.

On October 31, 1989, FmHA offered the property to the Miles at its appraised market value of $153,000, subject to the easement. The Miles rejected this offer, entered into another lease with FmHA, and extended their option to purchase. Pet. App. 5-6.

4. The Miles filed suit in the United States District Court for the District of Oregon, alleging breach of contract, violations of the Administrative Procedure Act (APA) in the process utilized to identify the wetlands complex on the ranch, and due

process and takings claims based on the Fifth Amendment. As the District Court stated, petitioners' 16 claims "all focus[ed] on the request that the FmHA be required to transfer the ranch to them without any [conservation] easement." Pet. App. 6.

The court dismissed petitioners' contract-based claims for lack of subject matter jurisdiction under the Administrative Procedure Act. Pet. App. 9-11. The court also dismissed petitioners' Fifth Amendment claims, holding that petitioners had alleged no cognizable property interest, that the federal regulations regarding conservation of wetlands had a sufficient public purpose, and that, in any event, the government had compensated petitioners for any losses caused by the wetlands easement. *Id.* at 17-19. The court rejected petitioners' claim that they had received insufficient notice of the existence of the wetlands complex, reasoning that even if such a claim were successful, petitioners would not be entitled to the relief they sought. *Id.* at 15. As to petitioners' argument that the agency had acted arbitrarily and capriciously in identifying the wetlands, the court held that petitioners had failed to show that the method used to identify the wetlands was improper. *Id.* at 29.

5. In an unpublished opinion, the court of appeals affirmed, adopting the district court's reasoning as to each issue on appeal. Pet. App. 40-47.

ARGUMENT

The court of appeals' unpublished affirmance of the district court's decision is correct and does not conflict with any decision of this Court or another court of appeals. Accordingly, no further review is warranted.

1. The court of appeals correctly affirmed the dismissal of petitioners' contract-based claims for lack of subject matter jurisdiction. Petitioners claim (Pet. 18-22) that FmHA breached its option contract, and that the breach constitutes agency action reviewable under the APA. Petitioners point, however, to no authority supporting the contention that a pure contract action not based on any statutory right, such as the one at issue here, comes within the waiver of sovereign immunity contained in Section 702 of the APA, 5 U.S.C. 702. To the contrary, in *North Side Lumber Co.* v. *Block*, 753 F.2d 1482, cert. denied, 474 U.S. 931 (1985), the Ninth Circuit held that the APA does not waive the sovereign immunity of the United States with respect to contract claims seeking declaratory or injunctive relief. In *North Side Lumber*, 753 F.2d at 1485, the court distinguished the cases relied upon by petitioners,[1] on the same grounds relied upon by the district court in this case. See Pet. App. 9-11; see also *Price* v. *United States General Services Admin.*, 894 F.2d 323, 324 n.3 (9th Cir. 1990) (noting that *Rowe* and *Laguna Hermosa Corp.* had been "limited to the facts of those cases," which involved "unique statutory rights," not contract claims). In any event, even if petitioners were correct that the decision below conflicts with prior Ninth Circuit cases, further review of such an intra-circuit conflict by this Court would be unwarranted. See *Wisniewski* v. *United States*, 353 U.S. 901 (1957).

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[1] See Pet. 19-21 (discussing *Rowe* v. *United States*, 633 F.2d 799 (9th Cir. 1980), cert. denied, 451 U.S. 970 (1981); *Laguna Hermosa Corp.* v. *Martin*, 643 F.2d 1376 (9th Cir. 1981); *Lehner* v. *United States*, 685 F.2d 1187 (9th Cir. 1982), cert. denied, 460 U.S. 1039 (1983)).

Petitioners also err in contending that the panel's holding is inconsistent with this Court's decision in *Bowen* v. *Massachusetts*, 487 U.S. 879 (1988). In *Bowen*, this Court held that a district court had jurisdiction over a claim against a federal agency for reimbursement of Medicaid funds, because such a claim did not constitute one for money damages within the meaning of the APA, and thus did not fall within that statute's exception of claims for money damages from its waiver of sovereign immunity. 5 U.S.C. 702. *Bowen*, which involved a statutory claim for reimbursement and not a contract claim, did not call into question the doctrine that the APA's waiver of sovereign immunity does not reach contract-based claims for declaratory or injunctive relief. Decisions since *Bowen* have continued to recognize this principle. See, *e.g.*, *Eagle-Picher Industries, Inc.* v. *United States*, 901 F.2d 1530, 1532 n.1 (10th Cir. 1990); *Coggeshall Development Corp.* v. *Diamond*, 884 F.2d 1, 3-5 (1st Cir. 1989).

2. Petitioners' claims under the APA also do not merit this Court's review. First, petitioners claim that FmHA failed to follow its regulations in identifying the wetlands on the ranch. As the court of appeals held, however, petitioners "fail[ed] to demonstrate that the methods used in designating the wetlands were deficient." Pet. App. 46. Petitioners therefore err in characterizing (Pet. 11-14) the decision below as acknowledging the agency's failure to follow its regulations but finding that action not to be arbitrary or capricious. Moreover, even if petitioners were correct that the agency failed to heed its own procedures, the court of appeals' unpublished affirmance of that error hardly poses a danger of upsetting the well-settled proposition that agencies are bound to

follow their own rules.[2] Such a claim of error would not call for this Court's review.

The court of appeals and the district court found it unnecessary to reach the merits of petitioners' second APA claim, namely that the agency failed to give them sufficient notice of the existence of a wetlands complex as required by its regulations, 7 C.F.R. 1955.137. We believe that petitioners' claim is entirely without basis.[3] The lower courts were correct, however, to hold that, even assuming petitioners' claim had merit, the relief they sought was unavailable. Pet. App. 14, 45. The most petitioners

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[2] Petitioners also claim (Pet. 14-15) FmHA's alleged failure to designate the wetlands pursuant to agency regulations violated due process. In view of the fact that officials from three separate government agencies made several trips to the property to identify the wetlands (see Pet. 4-6), petitioners surely received all the process they were due as a constitutional matter. And even if petitioners were correct that FmHA violated its regulations in designating the wetlands, petitioners have offered no basis whatever to think that such a violation of an agency regulation amounts to a deprivation of due process. See *United States* v. *Caceres*, 440 U.S. 741 (1979).

[3] The regulation relied upon by petitioners (Pet. 23-24) requires FmHA to "inform prospective purchasers at the time of the first inquiry * * * that the property is located in a * * * wetland area and specify any use restrictions resulting from this location." 7 C.F.R. 1955.137(a)(2)(i). Petitioners and FmHA entered into their purchase option contract on March 13, 1987. Pet. App. 4. As petitioners state (Pet. 4), FmHA was not informed of the existence of the wetlands complex on the ranch until February 25, 1988—over 11 months after petitioners and FmHA entered into their contract. In light of FmHA's lack of knowledge of the wetlands complex until almost a year after the contract was entered into, it is difficult to see how FmHA could be faulted for failing to inform petitioners of its existence at the time they entered into contract negotiations.

would be entitled to would be rescission of their contract, and there is no basis whatever to suggest that they should be entitled to transfer of the property without the conservation easement. As the court of appeals recognized, the "FmHA has no authority to sell the ranch in question without first imposing an easement to protect the designated wetlands." *Id.* at 45. Moreover, the purchase price ultimately set for the property was based on its value with the easement in place. *Id.* at 5.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JULY 1992